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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 HOLLY P.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C20-5573-SKV

ORDER REVERSING
COMMISSIONER'S DECISION

13
14 Plaintiff seeks review of the denial of her application for Supplemental Security Income.
15 Having considered the Administrative Law Judge's (ALJ) decision, the administrative record
16 (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision
17 and **REMANDS** the matter for further administrative proceedings under sentence four of 42
18 U.S.C. § 405(g).

19 **BACKGROUND**

20 Plaintiff was born in 1970, has at least a college education, and has no past relevant work.
21 AR 34-35. On January 23, 2017, Plaintiff applied for benefits, alleging disability as of May 14,
22 2009.¹ AR 20. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff
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¹ At the hearing, Plaintiff amended her alleged onset date to January 23, 2017. AR 20.

1 requested a hearing. *Id.* After the ALJ conducted a hearing on May 16, 2019, the ALJ issued a
2 decision finding Plaintiff not disabled. AR 17-41.

3 THE ALJ'S DECISION

4 Utilizing the five-step disability evaluation process,² the ALJ found:

5 **Step one:** Plaintiff has not engaged in substantial gainful activity since January 23, 2017.

6 **Step two:** Plaintiff has the following severe impairments: degenerative disc disease,
7 status post partial mastectomy for right breast cancer, seizures, carpal tunnel syndrome,
8 tinnitus, major depressive disorder, mood disorder, not otherwise specified, borderline
9 personality disorder, and general anxiety disorder.

10 **Step three:** These impairments do not meet or equal the requirements of a listed
11 impairment.³

12 **Residual Functional Capacity:** Plaintiff can perform light work subject to additional
13 limitations.

14 **Step four:** Plaintiff has no past relevant work.

15 **Step five:** As there are jobs that exist in significant numbers in the national economy that
16 Plaintiff can perform, Plaintiff is not disabled.

17 AR 22-36.

18 On April 13, 2020, the Appeals Council denied Plaintiff's request for review, making the
19 ALJ's decision the Commissioner's final decision. AR 1-6. Plaintiff appealed the final decision
20 of the Commissioner to this Court. Dkt. 4.

21 LEGAL STANDARDS

22 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
23 security benefits when the ALJ's findings are based on legal error or not supported by substantial
evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As
a general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the

² 20 C.F.R. § 404.1520.

³ 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
2 (cited sources omitted). The Court looks to “the record as a whole to determine whether the
3 error alters the outcome of the case.” *Id.*

4 Substantial evidence is “more than a mere scintilla. It means - and means only - such
5 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
6 *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d
7 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving
8 conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v.*
9 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record
10 as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the
11 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
12 susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that
13 must be upheld. *Id.*

14 DISCUSSION

15 Plaintiff argues the ALJ erred by misevaluating certain medical opinion evidence,
16 discounting her testimony, fashioning a deficient RFC, and making unsupported step five
17 findings. The Commissioner argues the ALJ’s decision is free of harmful legal error, supported
18 by substantial evidence, and should be affirmed.

19 A. The ALJ Erred in Evaluating the Medical Evidence

20 A treating doctor’s opinion is generally entitled to greater weight than an examining
21 doctor’s opinion, and an examining doctor’s opinion is entitled to greater weight than a non-
22 examining doctor’s opinion. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). An ALJ
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1 may only reject the contradicted opinion of a treating doctor by giving “specific and legitimate”
2 reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

3 *1. William Weiss, Ph.D.*

4 Dr. Weiss examined Plaintiff in December 2017, and assessed she “shows the diagnostic
5 criteria associated with borderline personality disorder, generalized anxiety disorder with panic
6 attacks, and post traumatic stress disorder.” AR 932. He opined “[s]ustained concentration and
7 persistence are markedly impaired by her problems with borderline personality disorder,
8 generalized anxiety disorder with panic attacks, and post traumatic stress disorder,” “[s]ocial
9 interaction, because of her borderline personality disorder, is severely impaired,” and
10 “[a]daptation is markedly impaired.” AR 934. He further opined “[s]he can improve and she is
11 motivated for work, she claims, but because of her significant psychological problems, she is
12 unlikely to be able to maintain gainful employment in the future.” *Id.*

13 The ALJ first discounted Dr. Weiss’s opinion because the doctor “significantly
14 overestimated the severity of the claimant’s limitations[.]” AR 32. This conclusory finding is
15 legally erroneous. Rather than merely stating his conclusions, the ALJ “must set forth his own
16 interpretations and explain why they, rather than the doctors’, are correct.” *Reddick v. Chater*,
17 157 F.3d 715, 725 (9th Cir. 1998) (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
18 1988)); *see also Garrison*, 759 at 1012–13 (“[A]n ALJ errs when he rejects a medical opinion or
19 assigns it little weight while doing nothing more than ignoring it, asserting without explanation
20 that another medical opinion is more persuasive, or criticizing it with boilerplate language that
21 fails to offer a substantive basis for his conclusion.”) (citing *Nguyen v. Chater*, 100 F.3d 1462,
22 1464 (9th Cir. 1996). The ALJ accordingly erred by discounting Dr. Weiss’s opinion on this
23 ground.

1 The ALJ also discounted Dr. Weiss’s opinion because it “appear[s] to be based on the
2 claimant’s subjective statements.” AR 32. However, psychologists’ opinions “will always
3 depend in part on the patient’s self-report.” *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir.
4 2017). Dr. Weiss did not opine Plaintiff malingered or was otherwise unreliable. The ALJ
5 accordingly erred by discounting Dr. Weiss’s opinion on this ground.

6 2. *Lauren Brodie, Psy.D.*

7 Dr. Brodie examined Plaintiff in November 2016, and assessed diagnoses of “Major
8 Depressive Disorder, Recurrent, Mild” and “Borderline Personality Disorder with Narcissistic
9 Traits.” AR 402. Dr. Brodie opined Plaintiff’s “symptoms of depression may interfere with her
10 ability to work, as during these times she does not attend appointments or programs regularly.
11 Additionally, if she feels challenged or talked down to by others at work (co-workers, boss,
12 customers) she may have difficulty maintaining her composure and not acting out. With time and
13 in the write [*sic*] job, [Plaintiff] will likely be able to work through how these symptoms would
14 affect her work.” AR. 405. The ALJ gave Dr. Brodie’s opinion “significant weight.” AR 32.

15 Plaintiff argues the “ALJ erred by failing to acknowledge that Dr. Brodie *did not* opine
16 that sufficient time had elapsed for [Plaintiff] to be able to successfully sustain any type of
17 competitive employment.” Dkt. 23 at 4. However, an ALJ generally may accept any medical
18 opinion and need not even give reasons. *See Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995)
19 (ALJ must provide reasons for rejecting a medical opinion, but not for accepting and interpreting
20 one); *see also Turner v. Comm’r of Social Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010)
21 (“the ALJ did not need to provide ‘clear and convincing reasons’ for rejecting [a treating
22 doctor’s] report because the ALJ did not reject any of [his] conclusions”). The ALJ accordingly
23 did not err by crediting Dr. Brodie’s opinion.

1 3. *Non-Examining Doctors' Opinions*

2 The Court need not address Plaintiff's arguments concerning the ALJ's treatment of the
3 non-examining doctors' opinions, as the ALJ's error in rejecting the opinion of Dr. Weiss requires
4 the ALJ to reevaluate, on remand, what weight should be given to the non-examining opinions.

5 4. *Other Medical Evidence*

6 Plaintiff lists, seriatim, findings and notations of numerous medical providers. Dkt. 24 at
7 4-15. She states the findings of these sources support Dr. Weiss's opinion and her testimony. *Id.*
8 at 15. The Court agrees the ALJ failed to provide specific and legitimate reasons for discounting
9 Dr. Weiss's opinion, as discussed above, but otherwise rejects Plaintiff's conclusory statements
10 as grounds to reverse the ALJ. Plaintiff bears the burden of showing the ALJ harmfully erred.
11 *See Molina*, 674 F.3d at 1111. Plaintiff's conclusory statements regarding Plaintiff's view of the
12 record are insufficient to meet this burden. *See Indep. Towers of Washington v. Washington*, 350
13 F.3d 925, 930 (9th Cir. 2003) ("Our adversarial system relies on the advocates to inform the
14 discussion and raise the issues to the court. ...We require contentions to be accompanied by
15 reasons."); *see generally Carmickle v. Commissioner*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)
16 (declining to address issues not argued with any specificity); *see also James M. v. Comm'r of*
17 *Soc. Sec.*, No. C19-5755-BAT, 2020 WL 3605630, at *2 (W.D. Wash. July 2, 2020) ("[I]t is not
18 enough merely to present an argument in the skimpiest way (i.e., listing the evidence), and leave
19 the Court to do counsel's work—framing the argument, and putting flesh on its bones through a
20 discussion of the applicable law and facts.").

21 **B. The ALJ Did Not Err by Discounting Plaintiff's Testimony**

22 The ALJ determined Plaintiff's medically determinable impairments could reasonably be
23 expected to cause the symptoms she alleged and therefore was required to provide "specific,

1 clear, and convincing” reasons supported by substantial evidence to discount her testimony.
2 *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

3 The ALJ indicated Plaintiff testified she “cannot work because of ongoing pain,
4 weakness, and loss of function due to back problems and hand issues, as well as cognitive and
5 social difficulties resultant from her mental health issues, including depression, anxiety, and
6 borderline personality disorder.” AR 26-27. The ALJ found Plaintiff’s testimony inconsistent
7 with “the objective evidence found in the medical file as well as the claimant’s own
8 statements[.]” AR 27.

9 Plaintiff contends that the ALJ erred in citing a lack of corroboration in the objective
10 evidence, because this reason alone cannot support the ALJ’s discounting of Plaintiff’s
11 allegations. Dkt. 23 at 16. But, the ALJ also pointed to inconsistencies between Plaintiff’s
12 allegations and the medical record and Plaintiff’s activities. Although Plaintiff argues in a
13 conclusory fashion that “none of the ALJ’s reasons for rejecting [Plaintiff’s] testimony are
14 specific, clear, and convincing,” *id.* at 18, Plaintiff does not address or otherwise grapple with the
15 specific reasons the ALJ provided, and therefore has not shown error in the ALJ’s stated
16 reasoning. Because Plaintiff has failed to meet her burden of showing harmful legal error, the
17 Court declines to disturb the ALJ’s treatment of Plaintiff’s testimony. *See Molina*, 674 F.3d at
18 1111.

19 **C. RFC and Step Five**

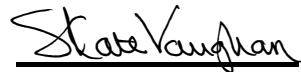
20 Because the ALJ misevaluated the medical evidence, the ALJ will necessarily need to
21 determine whether the RFC needs to be adjusted. For this reason, the Court need not reach
22 Plaintiff’s assignments of error regarding the RFC and step five. *See PDK Labs. Inc. v. DEA*,

1 362 F.3d 786, 799 (D.C. Cir. 2004) (“[I]f it is not necessary to decide more, it is necessary not to
2 decide more.”) (Roberts, J., concurring in part and concurring in the judgment).

3 **CONCLUSION**

4 For the reasons set forth above, the Commissioner’s final decision is **REVERSED** and
5 this case is **REMANDED** for further administrative proceedings under sentence four of 42
6 U.S.C. § 405(g).

7 Dated this 6th day of July, 2021.

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10 S. KATE VAUGHAN
11 United States Magistrate Judge
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